

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1869

Cir. Ct. No. 2005SC255

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RONALD G. WILKINS AND DONALD L. GRAF,

PLAINTIFFS-RESPONDENTS,

V.

KENNETH JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Kenneth Johnson appeals a small claims judgment evicting him from his residence and awarding damages to Ronald Wilkins and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Donald Graf. Johnson claims that he had entered into a land contract with Wilkins and Graf and, therefore, they were required to pursue foreclosure proceedings and not eviction proceedings. Because the parties replaced the land contract with a rental agreement, this court affirms the judgment.

¶2 At one time, Johnson owned the property from which he was ultimately evicted. When the property was foreclosed upon, it was purchased by Wilkins and Graf, who agreed to sell it back to Johnson using a land contract. The land contract was executed on November 14, 2003, and required Graf to make payments of \$420 per month, insure the property, and pay property taxes.

¶3 On April 18, 2005, Wilkins and Graf filed a small claims action, alleging that Johnson was three months behind in rent and requesting damages and eviction. At trial, Graf testified that Johnson failed to comply with the terms of the land contract and was then treated as a renter. Johnson's rent was \$500 per month. Graf also testified that the land contract was never recorded.

¶4 Johnson asserted that, because of the land contract, Wilkins and Graf were not entitled to an eviction judgment, but were instead required to pursue a foreclosure judgment. He conceded that he never insured the property or paid taxes on it, as required by the land contract. He also conceded that he later agreed to pay \$500 per month for rent. The court found that Johnson was a renter and granted a judgment of eviction, along with damages for unpaid rent.

¶5 On appeal, Johnson again argues that because there was a land contract, Wilkins and Graf were required to pursue a foreclosure instead of an eviction. Wilkins and Graf argue that the land contract was supplanted with a rental agreement after Johnson failed to comply with the terms of the land contract.

¶6 The problem with Johnson's claim is that it is premised on the existence of a land contract. Yet, the circuit court found that Johnson became a renter after he failed to comply with the terms of the land contract and agreed to pay \$500 per month for rent. This implies, as Wilkins and Graf suggest, that the parties contracted out of the land contract when entering into a rental agreement. Without contesting this finding, Johnson is unable to secure his key premise. Further, by not addressing his opponents' argument that a rental agreement replaced the land contract, Johnson concedes the argument. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

